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LYING TO PROTECT PRIVACY

ANITA L. ALLEN*

I. INTRODUCTION

THIS Article has two aims. The first aim is to identify clearly, for discussion and debate, the competing normative perspectives about lying and sexual privacy that lurk behind public opinion about the prosecution of perjury and related forms of deception. The second aim is to frame a defense of one such perspective: namely that lying, and in particular, lying to protect sexual privacy, is not a categorical moral wrong—not even when the liar is a high-ranking public official. This moral perspective does not plainly entail that officials should conceal sex crimes, lie to the public or lie under oath. It does, however, give those with discretion about pursuing the indictment, prosecution, impeachment, censure or resignation of a liar a reason to treat lies about sex differently than other kinds of lies.

My defense of lying to protect sexual privacy is based on the premise that privacy is a human need and moral entitlement, akin to freedom and equality. Three decades of reflection and observation by philosophers and psychologists inform this premise.¹ In the North American context,

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1. For a discussion of the value of various forms of privacy, see generally Anita L. Allen, *Constitutional Law and Privacy* [hereinafter Allen, *Constitutional Law*], in *A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY* 139 (Dennis Patterson ed., 1996); Anita L. Allen, *Genetic Privacy: Emerging Concepts and Values* [hereinafter Allen, *Genetic Privacy*], in *GENETIC SECRETS: PROTECTING PRIVACY AND CONFIDENTIALITY IN THE GENETIC ERA* 31 (Mark A. Rothstein ed., 1997); Anita L. Allen, *The Jurispolitics of Privacy* [hereinafter Allen, *Jurispolitics of Privacy*], in *RECONSTRUCTING POLITICAL THEORY: FEMINIST PERSPECTIVES* 68 (Mary Lyndon Shanley & Uma Narayan eds., 1997); Anita Allen, *Privacy* [hereinafter Allen, *Privacy*], in *A COMPANION TO FEMINIST PHILOSOPHY* 456 (Alison M. Jagger & Iris Young eds., 1998); Anita L. Allen, *Privacy in Health Care* [hereinafter Allen, *Privacy in Health Care*], in *4 ENCYCLOPEDIA OF BIOETHICS* 2064 (Warren T. Reich ed., rev. ed. 1995); ANITA L. ALLEN, *UNEASY ACCESS: PRIVACY FOR WOMEN IN A FREE SOCIETY* (1988) [hereinafter ALLEN,

privacy is not a mere luxury or an optional good. Lying about sex has evolved as one way well-meaning people from all walks of life cope with the interplay of conflicting physical, emotional and social imperatives. Therefore, lying about sex is something Americans should not condemn too quickly or categorically.

Lying to protect privacy is not always a morally acceptable departure from the general principle of truthfulness. For example, when the supposed "sexual privacy" at issue concerns rape, incest, child molestation, sexual harassment or exploitation, privacy is no excuse or justification for lying. Any plausible defense of lying to protect privacy will have to be qualified.

My qualified defense of lying to protect sexual privacy is consistent with the widespread moral belief and religious doctrine that lying sometimes is a morally justifiable response to others seeking information to which they have no right.² Lying to a would-be murderer about the whereabouts of the would-be victim hoping thereby to thwart a crime is the right thing to do. Lying to the unjust, however, is not always the morally best alternative. Lying to a would be "busy-body" to thwart an ordinary inva-

UNEASY ACCESS]; RICHARD C. TURKINGTON ET AL., *PRIVACY: CASES AND MATERIALS* (1992); Anita L. Allen, *The Power of Private Facts*, 41 CASE W. RES. L. REV. 757 (1991) [hereinafter Allen, *Power of Private Facts*]; Anita L. Allen, *Privacy, Surrogacy and the Baby M Case*, 76 GEO. L.J. 1759 (1988) [hereinafter Allen, *Privacy, Surrogacy*]; Anita L. Allen, *The Proposed Equal Protection Fix for Abortion Law: Reflections on Citizenship, Gender, and the Constitution*, 18 HARV. J.L. & PUB. POL'Y 419 (1995) [hereinafter Allen, *Proposed Equal Protection Fix*]; Anita L. Allen, *Rethinking the Rule Against Corporate Privacy Rights: Some Conceptual Quandaries for the Common Law*, 20 J. MARSHALL L. REV. 607 (1987) [hereinafter Allen, *Rethinking the Rule*]; Anita L. Allen, *Taking Liberties: Privacy, Private Choice, and Social Contract Theory*, 56 U. CIN. L. REV. 461 (1987) [hereinafter Allen, *Taking Liberties*]; Anita L. Allen, *Tribe's Judicious Feminism*, 44 STAN. L. REV. 179 (1991) [hereinafter Allen, *Judicious Feminism*]; Anita L. Allen & Erin Mack, *How Privacy Got Its Gender*, 10 N. ILL. U. L. REV. 441 (1990).

2. See Alasdair MacIntyre, *Truthfulness, Lies, and Moral Philosophers: What Can We Learn from Mill and Kant?*, in 16 THE TANNER LECTURES OF HUMAN VALUES 307, 342 (Grethe B. Peterson ed., 1995) (quoting Kant's rejection of Benjamin Constant's view that "'to tell the truth is a duty only towards a person who has the right to the truth'"). The view that it is morally permissible to lie to someone who has no right to the information sought is not new. Immanuel Kant assessed it 200 years ago in his ethical writings on the subject of lying from benevolent motives. See *id.*

The religious view that it is morally permissible to lie to someone who has no right to the information to protect privacy is not new either. See Perez Zagorin, *The Historical Significance of Lying and Dissimulation*, 63 SOC. RES. 863, 866, 873-74, 883, 896-904 (1996) (arguing that Islam and Judaism of Marranos permitted outward lies about inward faith to avoid religious persecution and that Catholicism permits dissimulation in several contexts, including those contemplated by doctrine of "mental reservation"). Eminent sixteenth century Catholic authority Martin de Azpilcueta (called Dr. Navarrus) urged that the doctrine of mental reservation would permit lying when responding to questioning by judges and other superiors. See *id.* at 900 (stating that Navarrus's treatment of mental reservation permitted wide latitude in its use); see also T. Slater, *Mental Reservation*, in THE CATHOLIC ENCYCLOPEDIA 195 (Charles G. Herbermann et al. eds., 1913) (explaining that Catholicism permits lying to thwart serious harm to others).

sion of privacy in everyday life may not be the right thing to do either. A passenger on a train has no right to ask a stranger traveling with a child whether the child was adopted. And yet, because of the importance for children of knowing the truth about their origins, and feeling good about who they are, the stranger may be obligated to answer truthfully and cheerfully. I want to suggest that in instances where lying in response to prying is the morally best response, it is best due to the fundamental importance of certain forms of privacy. Stressing the good of privacy rather than the evil of snooping is my overall tactic.

The Clinton-Lewinsky affair forced the legal community and the general public to confront the ethics of lying about sex.³ When allegations of a sexual affair between President William Jefferson Clinton and former White House intern Monica Lewinsky came to light in January 1998, a series of important questions began to emerge.⁴ Lying by public officials is a legitimate cause for concern. One of the most compelling arguments against lying by government officials is that dishonesty by those in public life potentially undermines trust in government. Moral philosopher Sissela Bok advanced an eloquent version of this argument in a classic of practical philosophy, *Lying: Moral Choice in Public and Private Life*,⁵ and again in an editorial response to news of the Clinton-Lewinsky affair.⁶ Bok made a strong general case against lying by public officials and professionals, with which I largely agree. Her response to Clinton's lies was to argue that the societal need for the preservation of trust in public authority outweighs the President's and Ms. Lewinsky's individual needs for privacy, even if those needs were wrongfully discounted by the Independent Counsel's approach to his investigation and report.⁷

I am less persuaded than Bok that the public in fact experiences an erosion of trust in public authority upon learning of deceit relating to

3. See Kenneth Starr, *Referral to the United States House of Representatives Pursuant to Title 28, United States Code, § 595(c), Submitted by the Office of the Independent Counsel*, Sept. 9, 1998, available in 1998 WL 614815 [hereinafter *Starr Report*] (alleging that President Clinton committed high crimes or misdemeanors that warrant removal from office).

4. See Susan Schmidt et al., *Clinton Accused of Urging Aide to Lie; Starr Probes Whether President Told Woman to Deny Alleged Affair to Jones's Lawyers*, WASH. POST, Jan. 21, 1998, at A1 (reporting on initiation of Starr's investigation of Clinton-Lewinsky affair).

5. SISSELA BOK, *LYING: MORAL CHOICE IN PUBLIC AND PRIVATE LIFE* (1978) [hereinafter BOK, *LYING*]; see F.G. BAILEY, *THE PREVALENCE OF DECEIT* 27 (1991) (discussing Bok's truth-telling bias and reluctant acceptance of limited forms of deception).

6. See Sissela Bok, *Lies: They Come With Consequences*, WASH. POST, Aug. 23, 1998, at C1 [hereinafter Bok, *Lies Come With Consequences*] (creating case against lying by public officials).

7. See *id.* ("[M]any people have also been disturbed at what has seemed humiliating, at time prurient, probing of the president's intimate affairs both by investigators and the media."): see also Neil A. Lewis, *Judge Cites Possible Improper Leaks by Starr Office*, N.Y. TIMES, Oct. 31, 1998, at A9 (reporting on Judge Johnson's determination that there had been improper leaks by Starr's office).

consensual adult sex. If the Gary Hart debacle is evidence that I am wrong, the Clinton impeachment may be evidence that I am right.⁸ Clinton's high approval ratings in the wake of his stunning admissions of deceit could be interpreted as evidence that ordinary people distinguish between general deceptiveness in public roles, about which they are mainly unsympathetic, and deceptiveness concerning sexual matters by persons occupying public roles, about which they have some sympathy. I suspect that had Gary Hart been better known to the American people at the time of the "Monkey Business" monkey business, his presidential candidacy could have survived.⁹

Clinton's adultery was brought to the public's attention in pornographic detail and by government officials associated with a rival political party. A crucial possibility to explore, in response to concerns about government credibility, is that public trust in democratic government is as much harmed or more harmed by governmental investigation and disclosure of the raw intimacies of consensual adult sex and family life, as by the lies officials tell in attempting to maintain personal privacy. As Orlando Patterson exhorted in a *New York Times* editorial about the Clinton scandal, privacy is a requirement of freedom.¹⁰

But to whose freedom are we referring? In feminist thought, privacy is greeted with ambivalence, precisely because typical men enjoy more freedom than typical women. Feminists have warned that to advocate privacy aggressively is to advocate that men be allowed the freedom to subordinate women behind closed doors. Religious fundamentalists can make the analogous point that advocating privacy is advocating that men and women be free to commit sinful and degrading acts behind closed doors. Who wants to trumpet a President's privacy when that privacy is used to secure "blow jobs" from much younger female subordinates? Critics of President Clinton cannot place consensual adult sex in the same category as sexual harassment and rape. And yet sex between men and women who are neither age nor status peers raises questions about the very meaning and relevance of "consensual adult sex."

8. See Judy Mann, *Terminal Stupidity*, WASH. POST, May 6, 1987, at C3 (commenting on Gary Hart scandal). Gary Hart's front-running bid for the Democratic nomination for the presidency came to an abrupt end after the publication of photographs of Donna Rice sitting on his lap while they cruised overnight with others on a boat called "Monkey Business." See *id.* Hart was also accused of adultery and bad judgment. See Lois Romano & Marc Fisher, *Donna Rice Declines Limelight, Canceling News Conference*, WASH. POST, May 6, 1987, at A12 (discussing Gary Hart's character in midst of political candidacy); *Hart Admits That He Made a Mistake but Denies Tryst: Calls Story Misleading and False*, L.A. TIMES, May 5, 1987, at 1 [hereinafter *Hart Admits Mistake*] (same); *Hart's Wife: 'He Does Not Lie'*, SAN DIEGO UNION-TRIB., May 6, 1987, at A1 (same).

9. See *Hart Admits Mistake*, *supra* note 8, at 1 (reporting on damage to Hart campaign).

10. See Orlando Patterson, *What is Freedom Without Privacy?*, N.Y. TIMES, Sept. 15, 1998, at A1 (associating right to privacy with freedom and opining that one requires other).

To countenance lying to protect sexual privacy is not to endorse exploitative sexual relationships. Lying to protect acts that harm others has no morally protected status. The claim has been made that the Clinton-Lewinsky relationship was either exploitative of Lewinsky in principle, due to the age and power gaps, or exploitative of Lewinsky in fact, because, in the context of a clandestine extra-marital affair, she performed oral sex on the President without herself achieving orgasm, sometimes as the President spoke on the telephone to others. A standard retort has merit: Clinton did not exploit Lewinsky because she was willing, over twenty-one, ambitious, bright, affluent, sometimes sexually gratified and wielded significant power in the relationship.

I am reluctant to describe the Clinton-Lewinsky affair as substantially exploitative of Ms. Lewinsky. First, exploitation is a matter of degree. To a degree, Clinton exploited Lewinsky. To a degree, Lewinsky also exploited Clinton and the members of his staff whom she pressured to grant her special privileges and access to the detriment of their own careers and morals. Lewinsky was aggressive and persistent in her raunchy and romantic relationship with Clinton. Yet, the "casting couch" is no longer a young woman's only route to a rewarding career. Lewinsky knew that she was not required to have sex with the President to obtain or retain employment in government service or in the corporate sector. The second reason is that the public does not know, cannot know and should not know enough about the President's sexual relationship with Ms. Lewinsky to declare its content as exploitative. The kinky encounters described in the Starr Report sound like encounters lots of people in peer relationships enjoy.

II. LYING IS ORDINARY

Broadly defined, lying includes intentional falsification and deceitful concealment.¹¹ To lie is to make false statements or to conceal the truth knowingly, voluntarily and with an intent to deceive. So defined, lying is a perfectly ordinary event.¹² People lie all the time. Liars lie, but they are not alone. Ordinary people who value and practice a high degree of honesty also lie. Some highly regarded professionals lie as a seeming require-

11. See Bok, LYING, *supra* note 5, at 13-16 (emphasizing intentionality in definition of lying); see also PAUL EKMAN, TELLING LIES: CLUES TO DECEIT IN THE MARKETPLACE, POLITICS, AND MARRIAGE 25-42 (1985) [hereinafter EKMAN, TELLING LIES] (emphasizing deceitfulness as characteristic of lying).

12. See BAILEY, *supra* note 5, at 68 ("The habit of protective concealment . . . is ubiquitous, and there is nothing uncommon about it or about the accompanying itch to penetrate the privacy of others."); CHARLES V. FORD, LIES!, LIES!!, LIES!!!: THE PSYCHOLOGY OF DECEIT 4 (1996) (commenting that everyone lies); DAVID NYBERG, THE VARNISHED TRUTH: TRUTH TELLING AND DECEIVING IN ORDINARY LIFE 11 (1993) (stating that deception has unspoken role in everything we do); Bella M. DePaulo et al., *Lying in Everyday Life*, 70 J. OF PERSONALITY & SOC. PSYCHOL. 979, 993 (1996) (explaining that research subjects told several lies daily).

ment of their work.¹³ Physicians and nurses lie to patients to ease their distress.¹⁴ Social psychologists lie to research subjects in studies of human behavior.¹⁵ Law enforcement officials lie to criminal suspects to encourage cooperation and collect evidence.¹⁶ Diplomats and government bureaucrats lie to gain advantage over foreign governments in international affairs.¹⁷ Lawyers lawfully conceal truths unfavorable to their clients, for indeed, in the adversary system, "the very institutional framework of a legal system may be used to hide the truth"¹⁸

The frequency and significance of deception is not the same in every segment of the population or for all personality types, but men, women and children of all cultural and economic backgrounds lie.¹⁹ Women, who typically engage in a greater number of social interactions than men, may lie more often than men.²⁰ Small children may lie more often than typical adults.²¹ Lying and related forms of deception "appear[] to be normal rather than abnormal, a workaday attribute of practical intelli-

13. See Alan Ryan, *Professional Liars*, 63 SOC. RES. 620, 625-41 (1996) (illustrating that physicians, lawyers and politicians lie in professional contexts).

14. See Jennifer Jackson, *Telling the Truth*, 17 J. OF MED. ETHICS 5, 5-9 (1991) (discussing how medical professionals lie).

15. See generally JAMES H. KORN, *ILLUSIONS OF REALITY: A HISTORY OF DECEPTION IN SOCIAL PSYCHOLOGY* 1 (1997) (discussing various ways social scientists deceive their research subjects).

16. See NYBERG, *supra* note 12, at 185-88 (commenting on deception in police work).

17. See W. Peter Robinson, *Lying in the Public Domain*, 36 AM. BEHAV. SCIENTIST 359, 362-65 (1993) [hereinafter Robinson, *Lying in the Public Domain*] (commenting on lying in public affairs); see also JOHN ORMAN, *PRESIDENTIAL SECRECY AND DECEPTION* 7 (1980) (discussing lies and withholding of information to maintain positive public persona).

18. Robinson, *Lying in the Public Domain*, *supra* note 17, at 366; see H. Richard Uviller, *The Lawyer as Liar*, 13 CRIM. JUST. ETHICS 2, 105 (1994) (opining that "purely moral considerations do not invariably command strict honesty," but lawyers' roles of influence "in the affairs of government, commerce, and the private lives of the people" demand scrupulous attention to accuracy).

19. See LYING AND DECEPTION IN EVERYDAY LIFE 21 (Michael Lewis & Carolyn Saarni eds., 1993) [hereinafter LYING AND DECEPTION] (discussing deception in non-Western cultures); W. PETER ROBINSON, *DECEIT, DELUSION, AND DETECTION* 77-78, 169-74 (1996) [hereinafter ROBINSON, *DECEIT*] (same); Victor Znakov, *Comprehension of Lies: A Russian View*, in STATES OF MIND: AMERICAN AND POST-SOVIET PERSPECTIVES ON CONTEMPORARY ISSUES IN PSYCHOLOGY 79-82 (Diane F. Halperin & Alexander E. Voiskounsky eds., 1997) [hereinafter STATES OF MIND] (presenting Russian view); Deborah A. Kashy & Bella M. DePaulo, *Who Lies?*, 70 J. OF PERSONALITY & SOC. PSYCHOL. 1037, 1037 (1996) ("Lying is a fact of social life rather than an extraordinary or unusual event.").

20. See LYING AND DECEPTION, *supra* note 19, at 19-20, 126-47 (discussing sex differences regarding frequency of lying); DePaulo et al., *supra* note 12, at 980-81 (commenting on sex differences in lying).

21. See ROBINSON, *DECEIT*, *supra* note 19, at 40-73 (discussing how and when children learn to lie); Abigail F. Strichartz & Roger V. Burton, *Lies and Truth: A Study of the Development of the Concept*, 61 CHILD DEV. 211, 211-20 (1990) (presenting study of when children begin to use concepts of truth and deception).

gence.”²² People who lie too much or too little strike us as unkind.²³ Studies suggest that average Americans will admit to telling at least a couple of lies a day, and actually tell more.²⁴ Lying is frequent and pervasive because it works. Lying works because even experienced lie detectors can distinguish lies from truth only about half the time.²⁵ Not all lies work though. There are many reasons why lies fail.²⁶ Our lies fail because they are discovered or we give ourselves away through facial expression, demeanor or outright confession.²⁷

III. THE TRUTH-TELLING BIAS IN WESTERN ETHICS

Despite the prevalence of lying, western moral traditions generally advocate truth-telling over lying. Secular moralists and theologians have written extensively about the ideal and actual ethics of lying.²⁸ The Catholic theological tradition consistently regards lying as a grave sin. The Catholic doctrine does, however, appear to allow some untruthful assertions on certain occasions.²⁹ The Jesuits are often associated with the doctrine of “mental reservation.” This permits one to speak falsely or misleadingly, so

22. NYBERG, *supra* note 12, at 1.

23. See, e.g., BAILEY, *supra* note 5, at 69 (“The correct answer [to ‘[h]ow are you today?’] . . . is ‘Just Fine!’ Privacy is a must, even in suffering. A sure way to disconcert inquires is to tell them how in fact you are . . .”). We expect people whom we do not know well to lie to us about their health and suffering. See *id.* (discussing lying to protect privacy).

24. See FORD, *supra* note 12, at 4 (“A book based on a poll of Americans . . . claimed that 90% of the people polled admitted that they were deceitful. Lies . . . included lying about one’s . . . sex life . . .”); see also DePaulo et al., *supra* note 12, at 984 (“College students reported lying in approximately one out of every three of their social interactions, and people from the community lied in one out of every five social interactions.”).

25. See FORD, *supra* note 12, at 197-235 (discussing lie detectors).

26. See Paul Ekman, *Deception, Lying, and Demeanor*, in STATES OF MIND, *supra* note 19, at 93, 99 [hereinafter Ekman, *Deception*] (commenting on reasons why lies fail); Paul Ekman, *Why Don’t We Catch Liars?*, 63 SOC. RES. 801, 808-16 (1996) [hereinafter Ekman, *Catch Liars*] (same).

27. See generally EKMAN, TELLING LIES, *supra* note 11, at 80-161 (discussing how lies are detected by body language and facial expressions); ROBINSON, DECEIT, *supra* note 19, at 74-150 (same).

28. See generally BAILEY, *supra* note 5 (discussing ethics of lying); BOK, LYING, *supra* note 5 (same); ALISON LEIGH BROWN, SUBJECTS OF DECEIT: A PHENOMENOLOGY OF LYING (1998) (same); MARCEL ECK, LIES AND TRUTH (1970) (same); TIMUR KURAN, PRIVATE TRUTHS, PUBLIC LIES: THE SOCIAL CONSEQUENCES OF PREFERENCE FALSIFICATION (1995) (same); NYBERG, *supra* note 12 (same); LOYAL RUE, BY THE GRACE OF GUILE: THE ROLE OF DECEPTION IN NATURAL HISTORY AND HUMAN AFFAIRS (1994) (same); Robert C. Solomon, *What a Tangled Web: Deception and Self-Deception in Philosophy*, in LYING AND DECEPTION, *supra* note 19, at 30-58 (same); Mary Mothersill, *Some Questions About Truthfulness and Lying*, 63 SOC. RES. 913, 913-41 (1996) (same); Bernard Williams, *Truth, Politics, and Self-Deception*, 63 SOC. RES. 603, 603-17 (1996) (same); Zagorin, *supra* note 2, at 863-912 (same).

29. See Zagorin, *supra* note 2, at 869-77, 897-904 (discussing Protestant Christian perspectives on dissimulation).

long as one makes a mental note of the truth.³⁰ The standard example of when this doctrine may apply is the situation in which a murderer comes to your door looking for someone you know to be at home. When asked if the intended victim is at home, it is permissible to say that the intended victim is not, as long as you make a mental note that what you really mean is that the intended victim is at home, but not for the purposes of the murderer. The Catholic teaching is that you may lie or equivocate in this situation because the truth is sought by someone whose unjust intentions deny him or her the right to it.

The German philosopher Immanuel Kant advocated an absolute, categorical duty to speak the truth without regard to the consequences.³¹ He rejected the notion that it is just to lie to the unjust, pointing out that an outcome worse than the one the liar hoped to avert could come about as a consequence of the lie.³² For example, suppose you tell the murderer that the intended victim is not at home, hoping to mislead the murderer and send the murder on his or her way. Unknown to you, the victim is climbing out of a side window, hoping to escape while you distract the murderer. Relying on your lie, the murderer leaves the house, encounters the victim attempting to escape and kills the victim. Had you told the truth, the murderer might have come inside to search the house, giving the victim time to complete an escape.³³

Most contemporary philosophers who have taken up the subject of lying—F.G. Bailey,³⁴ Sissela Bok,³⁵ Christine Korsgaard,³⁶ David Nyberg,³⁷

30. See *id.* at 899 (describing Jesuit doctrine of “mental reservation”).

31. See Christine M. Korsgaard, *The Right to Lie: Kant on Dealing With Evil*, 15 PHIL. & PUB. AFF. 325, 326 (1986) (stating that Kant endorsed claim that one must never tell lies under any circumstances or for any purpose). *But see* MacIntyre, *supra* note 2, at 344-45 (citing scholarship suggesting that Kant’s views may have been less extreme early in his career).

32. See Korsgaard, *supra* note 31, at 326 (describing two of Kant’s examples of person’s lie causing less desirable consequences).

33. See Immanuel Kant, *On a Supposed Right to Lie from Philanthropy*, in IMMANUEL KANT: PRACTICAL PHILOSOPHY 605, 613 (Mary J. Gregor ed., 1996) (“To be truthful in all declarations is therefore a sacred command of reason prescribing unconditionally, one not to be restricted by any conveniences.”); *see also* Korsgaard, *supra* note 31, at 326-27 (discussing Kant’s famous essay *On Supposed Right to Lie from Altruistic Motives* and “murderer-at-the-door” hypothetical).

34. See BAILEY, *supra* note 5, at 13 (making point that wrongfulness of lie is function of its consequences and liar’s motivations).

35. See BOK, LYING, *supra* note 5, at 47-115 (discussing white lies, good excuses, justification and crisis intervention).

36. See Korsgaard, *supra* note 31, at 330 (“It is permissible to lie to deceivers in order to counteract the intended results of their deceptions . . .”).

37. See NYBERG, *supra* note 12, at 112-94 (emphasizing important role of deception in civility, parenting, friendship, altruism and law enforcement).

Alasdair MacIntyre³⁸ and Mary Mothersill,³⁹ to name a very few—have argued that the wrongness of lying is to some extent contingent upon the circumstances. They typically conclude that, while lying is sometimes justifiable, the better moral principle is that we should strive toward the highest possible degrees of honesty in our public and private lives.⁴⁰ We should be honest in dealings with our friends, families, coworkers, fellow citizens and government. We should also be honest with ourselves.⁴¹ In everyday life, judgments about the morality of particular instances of lying seem to depend upon who is doing the lying (*e.g.*, a friend, a child, a thief), what the lying concerns (*e.g.*, sex, health, business) and who is being lied to (*e.g.*, a dying patient, a judge, a racketeer).

Why is truth-telling better as a rule than lying? Philosophers have argued that individuals should avoid lies to promote knowledge of the truth about ourselves and others in important relationships,⁴² to show respect for moral persons' dignity as rational human beings and to achieve integrity and self-respect.⁴³ Experts also contend that "society is better if truth-telling prevails as the rule in public and private affairs,"⁴⁴ for truth-telling encourages the trust that is a basis for mutual reliance in commerce, government, social life and families.⁴⁵

38. See MacIntyre, *supra* note 2, at 357-58 ("Uphold truthfulness in all your actions by being unqualifiedly truthful in all your relationships and by lying to aggressors only in order to protect those truthful relationships against aggressors, and even then only when lying is the least harm that can afford an effective defense against aggression.").

39. See Mothersill, *supra* note 28, at 924-25 (discussing theory of consequentialism, according to which wrongness of lie depends upon its consequences).

40. See BAILEY, *supra* note 5, at 27 (describing thesis that "[s]ociety is better if truth telling prevails as the rule in public and private affairs"); MacIntyre, *supra* note 2, at 357 (suggesting that people limit use of lies to instances in which they are least harmful way to avoid aggression).

41. See David Shapiro, *On the Psychology of Self-Deception*, 63 SOC. RES. 785, 785-99 (1996) (stating that costs of self-deception outweigh benefits); see also Williams, *supra* note 28, at 615-16 (discussing collective self-deception among politicians, media and audiences and its effect of subverting real truth).

42. See MacIntyre, *supra* note 2, at 353-54 (stating that truthfulness in relationships ought to be promoted because we need to learn of our own intellectual and moral deficiencies, to have integrity as critics and to avoid corrupting power of fantasy).

43. See Korsgaard, *supra* note 31, at 333 (noting that under Kantian perspective, coercion and deception are most fundamental forms of wrongdoing because they cause others to be used for liar's ends without allowing them to choose freely to contribute to liar's ends).

44. BAILEY, *supra* note 5, at 27.

45. See BOK, LYING, *supra* note 5, at 26-28, 31, 50, 95-97, 126-28, 142, 164, 176, 178 (stating that truthfulness lends to foundation of human relationships and that institutions collapse when truthfulness is removed).

IV. MOTIVES FOR LYING

If truth-telling is so valuable, why do people lie? And why is all lying not clearly wrong? There appear to be a number of distinct reasons or motives for lying. Accounting for why people lie has been a recurrent concern of philosophers.⁴⁶ Motives matter to philosophers' moral assessment of lying because "we react very differently to identical actions if we believe that they arise from very different motives."⁴⁷ It is one thing to lie to prevent a murder, but it is something else to lie simply to pad a bank account. Accounting for why people lie has also been a subject of particular interest to social psychologists.⁴⁸ After extensive empirical studies of adults' and children's motives for lying, researcher Paul Ekman compiled a list of nine different reasons people lie. According to Ekman, the most common reasons people lie are to avoid punishment and to obtain rewards. People also lie to protect others from punishment, to protect themselves and others from the threat of physical harm, to win admiration, to get out of an awkward social situation, to avoid embarrassment, to maintain privacy and to exercise power over others.⁴⁹ ●f special interest to this Article is the eighth reason on Ekman's list—people lie to maintain their privacy. Philosopher David Nyberg has also expressly recognized the privacy motive, noting that "we have learned to use deception . . . to gain and protect privacy."⁵⁰

46. See, e.g., MacIntyre, *supra* note 2, at 314 (describing treatment of lying from time of Socrates through modern era).

47. Ekman, *Catch Liars*, *supra* note 26, at 83.

48. See, e.g., ECK, *supra* note 28, at 59-78 (stating that all lying is done with deceptive purpose and that lying should be judged by intention that motivates it); FORD, *supra* note 12, at 88-102 (describing 13 motivations for lying that may exist singly or in combination); RUE, *supra* note 28, at 144 (stating that persons sometimes employ deception to achieve personal wholeness); De Paulo et al., *supra* note 12, at 979-80 (noting that many goals that motivate nondeceptive communication also motivate deceptive communication); Wendy Doniger, *Sex, Lies, and Tall Tales*, 63 SOC. RES. 663, 663-99 (1996) (discussing deception in sexual behavior of humans); Ekman, *Catch Liars*, *supra* note 26, at 98 (listing reasons people lie); John Hollander, *The Shadow of a Lie: Poetry, Lying, and the Truth of Fictions*, 63 SOC. RES. 643, 643-61 (1996) (stating that liars always perceive some advantage in telling lie); Kashy & DePaulo, *supra* note 19, at 1037-38 (suggesting that person's motives for lying have correlation with person's personality); Robinson, *Lying in the Public Domain*, *supra* note 17, at 359-82 (discussing motivations of public figures to lie to public); Ryan, *supra* note 13, at 620 (analyzing lie told between spouses for purposes of saving marriage); Leonard Saxe, *Thoughts of an Applied Social Psychologist*, 46 AM. PSYCHOLOGIST 409, 412-13 (1991) (reviewing studies of conditions that compel individuals to lie or tell truth); Shapiro, *supra* note 41, at 785-800 (discussing causes and effects of self-deception); Strichartz & Burton, *supra* note 21, at 211-20 (studying children's conceptions of lies and truth); Uviller, *supra* note 18, at 102-05 (discussing forces motivating lawyers to lie in violation of disciplinary rules).

49. See Ekman, *Deception*, *supra* note 26, at 98 (describing motives that emerged from interview data).

50. NYBERG, *supra* note 12, at 1. Nyberg wrote:

A life without privacy is unthinkable. How could we make love? Reflect or meditate? Write a poem, keep a diary, daydream? How could we attend to those sometimes highly self-conscious requirements of skin and

Lying to maintain privacy is a complex motive, for there are several distinguishable dimensions of privacy a person might seek to secure through deception. Dimensions of physical, informational, decisional and proprietary privacy all can be furthered by lying.⁵¹ An adulterer, like President Clinton, might lie, first, to conceal his affair; second, to conceal the trysts themselves; third, to maintain a sense of independence—a sense of being free, autonomous and able to make one's own decisions about sex, love and intimacy without unwanted interference; and fourth, to preserve the dignitarian interests and any economic interests in good name and reputation. Three of the four dimensions of privacy protected by the lying adulterer merit further comment.

First, a person might lie, for better or for worse, to maintain *informational* privacy. The person might lie seeking to keep private confidential or secret information about a sexual relationship, as in the case of President Clinton; information about a medical ailment, as in the case of tennis great Arthur Ashe, who managed to conceal his AIDS from the public for some time;⁵² information about financial affairs, as in the case of the former Secretary of Housing and Urban Development, Henry Cisneros, who lied to the FBI in a background check about tens of thousands of dollars he paid to an ex-mistress.⁵³ People also lie to protect the privacy of information about their families, as in the bizarre case of Judge James Ware of San Jose, who hid information about his uninteresting family background.⁵⁴ Judge Ware repeatedly lied in professional settings, claiming that as a child living in Alabama he had suffered through a vicious hate

bowels? How could we expect to keep our intimate doings out of the newspaper? How could we pay adequate attention to our personal inner worlds, or find peace from the demands of daily living? We need a certain amount of privacy to maintain a sense of dignity and decency, to stay sane and happy. Civility itself requires privacy.

Id. at 129. Nyberg also wrote that:

Privacy conveys advantage in achieving and maintaining a reputation, the difficulty of which for public figures is symbolized both by the highly prosperous gossip industry and by an increasing number of scandalous demeaning congressional hearings. The advantage of privacy extends beyond private life, to the world of employment, where competition for jobs, promotions, and other business associations is keen and mean.

Id.

51. See Allen, *Genetic Privacy*, *supra* note 1, at 33 (recognizing and explicating four basic categories of privacy).

52. See *Why Arthur Ashe Kept it Secret*, N.Y. TIMES, Apr. 10, 1992, at A36 (stating that Arthur Ashe "felt obliged" to keep his illness secret for fear that he and his family would suffer social stigma if it was revealed that he had AIDS).

53. See David Johnston, *March 12-18: Drip, Drip of Scandal-Cisneros Is on the Spot, Pena Is off the Hook*, N.Y. TIMES, Mar. 19, 1995, at 2E (describing how Cisneros's lies to FBI during his background check were revealed when his former mistress produced secretly recorded tapes of her conversations with Cisneros).

54. See Harriet Chiang, *Federal Judge in San Jose Publicly Reprimanded for Lying*, S.F. CHRON., Aug. 19, 1998, at A17 (describing Judge James Ware's public reprimand by panel of nine federal judges from throughout western states); Reynolds Holding, *Family Accepts Judge's Apology for Lie*, S.F. CHRON., Nov. 11, 1997, at A2

crime perpetrated against his brother. At first, Judge Ware lied to gain sympathy and attention rather than informational privacy, but then, as time passed, he needed to continue his lies to keep the truth of his dull background from being exposed. Former Labor Secretary Robert Reich tactfully lied about the miserably low esteem in which he held others while he served in the Clinton Administration. Only after the publication of his notoriously inaccurate tell-all book, *Locked in the Cabinet*,⁵⁵ did the bulk of his former Washington associates learn Reich's true impressions.⁵⁶

Second, lies can protect opportunities for *physical* privacy, like solitude and trysts. When President Clinton told White House staff members that he was receiving Ms. Lewinsky into the Oval Office to examine the papers or accept the pizza she pretended to deliver, lying was a way of getting time alone for intimacy.⁵⁷

Third and finally, lying can be motivated by a desire to conceal and facilitate independent choices relating to aspects of life that we usually tag "private." People commonly lie to protect their *independence*.⁵⁸ In constitutional law, privacy often signifies independence or autonomy. Philosophers and psychologists who talk about lying to protect independence often have in mind the very same things that we in the legal community have in mind when we talk about the decisional privacy of the abortion choice or the decisional privacy of a terminally ill patient electing to terminate life-support.⁵⁹ President Clinton's lies to friends and aids about the

(recounting story of how Judge Ware falsely claimed to be brother of Alabama boy with same last name who was slain by racists).

55. ROBERT B. REICH, *LOCKED IN THE CABINET* (1997).

56. See *id.* at ix (explaining, in Reich's own words, his reasons for writing book and his apologies to colleagues described in book who might feel "ill-served" by his account of them); see also Al Kamen, *Drawing a Blank*, WASH. POST, Mar. 29, 1998, at W4 (describing Reich's book as being "skewered for inaccuracies, misquotations and fabrications"); Diane E. Lewis, *Critics Contend Reich's Book Pits Perception vs. Reality*, BOSTON GLOBE, June 1, 1997, at F1 (noting that since publication of Reich's book, "A firestorm of criticism has accused the author of fabricating many of the depicted events").

57. See *Starr Report*, *supra* note 3, at 85 ("I would pass by the office with some papers and then . . . he would sort of stop me and invite me in.").

58. See FORD, *supra* note 12, at 88-89 (noting that desire for independence may drive people to lie). Ford also states that:

[P]eople who react strongly to control or intrusiveness from others may resort to lying in an effort to maintain a sense of independence [The behavior of] a young lawyer who repeatedly engaged in extramarital affairs . . . had a compulsive quality about it Through the process of psychotherapy, it became apparent that this young man was using his sexual liaisons as a means of maintaining a secret life and a sense of autonomous maleness His deceitful behavior . . . was motivated . . . by the need for psychological independence.

Id. at 89.

59. See Allen, *Constitutional Law*, *supra* note 1, at 148-50 (noting that some scholars would exclude "autonomous decision making" from definition of privacy; however, "the idea of decisional privacy [has taken hold] in ordinary language, philosophy, and constitutional jurisprudence"); Allen, *Privacy in Health Care*, *supra*

nature of his relationship with Miss Lewinsky were designed to allow him the freedom to continue a relationship of which he knew most others would disapprove on moral or prudential grounds.

I am primarily interested in the most self-focused kind of lying for privacy—lying to protect one's own privacy. It is worth noting, however, that people also lie to protect the privacy of others. They lie attempting to conceal facts about others' affairs. President Clinton's secretary, Betty Currie, may have done this.⁶⁰ We lie sometimes to protect members of our families, our friends or our lovers.⁶¹ We may also lie because we believe that we have a professional duty to guard zealously the confidentiality of personal, business, legal and medical information about other people.

V. LYING ABOUT SEX: WALKING ON THE "WILDE" SIDE

People lie about sex. Indeed, as the television comedians say, people lie *during* sex. That people lie to avoid disclosure of facts about their sex lives and to enjoy sexual independence is a reality observed in everyday life that psychologists have studied and confirmed. In light of the current diverse mix of sexual mores, public officials may decide that carefully concealing their sex lives is essential to the freedom and intimacy they understandably crave. Immediately after President Clinton confirmed his improper relationship with Monica Lewinsky, Americans were eager to understand two rather remarkable phenomena: that intelligent people, who know they will be scrutinized, undertake the kinds of sex lives about which they will probably have to lie; and that these same intelligent people sometimes lie in such sloppy and public ways that their lies can be uncovered easily and with disastrous consequences.

note 1, at 2065-67 (discussing decisional privacy in health care context and noting that "[d]ecisional privacy rights in the law presuppose a private sphere of conduct immune from state or federal regulation"); Allen, *Proposed Equal Protection Fix*, *supra* note 1, at 440 (describing decisional privacy concept within constitutional law).

60. See *Starr Report*, *supra* note 3, at 112-13 (stating that "Ms. Currie helped keep the relationship secret" by persuading Secret Service to not record Monica Lewinsky's visits to President Clinton and by avoiding writing down messages from Monica Lewinsky to President). According to the Starr Report, Betty Currie served as a confidential "go between" for President Clinton and Monica Lewinsky (e.g., on March 29, 1997 and May 24, 1997, the President also apparently asked Betty Currie to try to find Lewinsky a White House job). See *id.* at 119, 123-24 (recounting events on date when Lewinsky had last sexual encounter with President and date when President officially ended relationship with Lewinsky).

61. Cf. Margaret Morganroth Gullette, *Why Women Won't Join the War on Clinton*, BOSTON GLOBE, Sept. 21, 1998, at A15 (describing privacy as sound motive for lying). Gullette noted:

Personally, if my husband had had an affair and been coerced into testifying about it, I would want him to lie in public and struggle to keep it secret as long as he could. Our right to privacy—which means my privacy—should be protected. And if no law or custom now protects it, then "perjury" must suffice.

Id.

Before President Clinton scandalized Washington, Oscar Wilde scandalized London.⁶² The two men merit comparison. A famous lecturer, wit and playwright, Oscar Wilde had a complex and troubling sex life. He was married and fathered children by his wife, Constance. While married, he undertook a series of three homosexual relationships with other artists.⁶³ He also engaged in sex and sex-play (voyeurism) with numerous other men.⁶⁴ Wilde lied to his wife and many of his associates about his sexual practices. Wilde was remarkably reckless about the lies he told, lies that might otherwise have vouchsafed his identity and freedom. On the one hand, he often made efforts to keep his illicit romantic and sexual affairs secret, particularly from his wife and children. On the other hand, he freely and openly associated with well-known homosexuals, advocates of homosexual tolerance at Oxford and with notorious and flamboyant homosexuals and indiscreet young male prostitutes in London and abroad.⁶⁵

That Wilde lied can be looked upon with a certain amount of sympathy given the severe legal penalties for open homosexuality in Wilde's time. Why, however, was Wilde willing to risk criminal prosecution? Why was he not deterred by the harshness of the law? It was fairly safe, if one was discreet, to be an educated, upperclass homosexual. Wilde knew that most homosexuals were not exposed and prosecuted in London. More importantly, Wilde may have felt that sexual risks were worth taking if they allowed him to live more authentically. His identity and freedom were diminished by a life restricted to conventional heterosexual marriage.⁶⁶

62. See generally RICHARD ELLMANN, OSCAR WILDE (1988) (describing scandalous life of Oscar Wilde in nineteenth century England).

63. See *id.* at 307 (describing Wilde's early homosexual relationship with artist John Gray). Wilde's series of lovers also included Andre Gide. See *id.* at 355 (depicting Gide as being "enraptured" with Wilde). The lover who ultimately led to Wilde's ruin though was the Lord Alfred (Bosie) Douglas. See *id.* at 389 (describing relationship between Wilde and Douglas as "intense and romantic" although not monogamous).

64. See *id.* at 389-91 (describing series of men with whom Wilde had relationships).

65. See *id.* (commenting on Wilde's open homosexual relationships).

66. See *id.* at 435 ("[Wilde's] life with Douglas, including the publicity of their romantic passion, reflected his intention to oblige a hypocritical age to take him as he was."). Ellmann speculates that:

The excitement of doing something considered wrong, and the [vices of] faithless boys . . . may have been as important for Wilde as sexual gratification. . . . English society tolerated homosexuality only so long as one was not caught at it. His chances of being caught were enormously increased as he combined casual associations with his more idealized ones Wilde believed in his star But he was always bringing himself to the brink.

Id. at 390-91. Michel Foucault observed that "we now know that it is sex itself which hides the most secret parts of the individual: the structure of his fantasies, the roots of his ego, the forms of his relationship to reality. At the bottom of sex, there is truth." Doniger, *supra* note 48, at 664. If there is truth in sex, there is surely the most truth in the sex that is most authentic. But see *id.* at 665-76 (argu-

While still officially denying homosexuality, Wilde virtually abandoned his wife and children in favor of living with the handsome, petulant and self-centered poet, Lord Alfred Douglas. Douglas's father, the Marquess of Queensberry, disapproved of his son's relationship with Wilde and demanded in vain that Wilde break things off. Prodded by Lord Douglas, Wilde took lying about sex to extraordinary heights when he brought a defamation action against Queensberry.⁶⁷

Wilde's great folly was to sue a powerful opponent and to bring libel charges that he could only defend by easily disproved lies. The libel allegations focused on a hateful note Douglas's father scrawled on the back of a card left for Wilde at Wilde's club. Queensberry and his lawyers maintained that the Marquess's note described Wilde as a man "posing as a Sodomite [sic]."⁶⁸ So far as Wilde and Lord Douglas were concerned, the note condemned Wilde as a sodomite.⁶⁹ In defamation actions, truth is obviously a defense. The Marquess's lawyers had no trouble rounding up male prostitutes willing to testify against Wilde.⁷⁰ They secured hotel staff willing to testify to finding men in Wilde's bed and fecal stains on Wilde's bed sheets.⁷¹ Thus, Wilde's futile attempt at a face-saving lawsuit against Queensberry led to his conviction for sodomy and sentencing to two grueling years of hard labor, a sentence that broke his health and ruined and shortened his life.⁷²

With lies we desperately try to preserve our freedom and our identities—our actual identities rather than the masks we must wear as a price of admission to conventional mainstream society. Wilde went too far in trying to protect his life as an eccentric gay artist, much as President Clinton went too far in trying to protect his life as a daring ladies' man. Clinton recklessly engaged in a clandestine extra-marital sexual affair with Lewinsky and then boldly lied about that fact on national television and in private meetings with his closest friends and confidants. Like Wilde, Clinton allowed himself to become smitten with a self-centered young lover and

ing that sexual love is inherently deluding). The sexual act is the ultimate key to concealed identity. *See id.* at 664 (observing that, according to Bible stories, great literature and Freud, sex is "the most reliable criterion of personal identity"). The true self is revealed in the physical act of sex and in the spiritual act of falling in love. *See id.* (noting distinction between physical sex and falling in love).

67. *See ELLMANN, supra* note 62, at 439 (describing initiation of libel suit against Marquess of Queensberry and quoting Wilde as saying, "'What is loathsome to me is the memory of interminable visits paid by me to the solicitor . . . [where] I would sit with [a] serious face[] telling serious lies'").

68. *Id.* at 438.

69. *See id.* (describing impact that Queensberry's note had on Wilde).

70. *See id.* at 441-42 (describing how detectives working for Queensberry uncovered evidence against Wilde through female prostitute who complained about competition for male clientele "from boys under the influence of Oscar Wilde").

71. *See id.* at 460 (describing testimony presented at trial against Wilde).

72. *See BAILEY, supra* note 5, at 37 (stating that "[t]he prospect of losing face is, of course, apt to arouse nonrealistic sentiments, and a man can be moved to cut off his nose to save his face").

then entrusted his remarkable and historic career to an immature lover's judgment. Like Wilde, Clinton wound up hurting and embarrassing his family by an affair with a beautiful, younger and less gifted person. Like Wilde, Clinton sought to turn the truth-tellers, whom he regarded as having inappropriately pryed and distorted the truth, into moral monsters. Wilde literally put Queensberry on trial, while Clinton tried, with some success, to put Kenneth Starr and the Republican Congress on trial in the minds of the American people. Like Wilde, Clinton temporarily sought refuge in technical definitions of sexual conduct in an effort to escape the law. Clinton denied a "sexual relationship" with "that woman" on national television because he could honestly say he never had experienced full penetration penile-vaginal intercourse with Lewinsky. Wilde denied that he was a sodomite because he could honestly say that he did not practice penile-anal intercourse with Lord Douglas.⁷³

To lie about sex in such a fashion, to walk on the "Wilde" side, a person must possess character traits and status not shared by everyone. Perhaps one has to feel and be very powerful, and enjoy taking risks. But, perhaps one need only have a very strong urge to be the genuine person behind the masks donned for public roles and private responsibilities. Wilde emerges as more sympathetic than Clinton because conventional morality increasingly regards legally enforced homophobia as unjust, but continues to regard monogamy as a legitimate requirement of marriage. A recent film version of Wilde's life paints Wilde sympathetically as a tragic hero, a gifted genius in love with someone who did not deserve his love.⁷⁴ Similarly, *Primary Colors*, a veiled film version of Clinton's presidential campaign, paints Clinton as a tragic hero, a brilliant communicator with a pathetic weakness for illicit sex and greasy food.⁷⁵

VI. PRIVACY AND THE FIXATION OF MEANING

We must grapple with the following question: if you take privacy seriously, as many experts say we ought, don't you have to make a virtue out of telling lies to protect privacy?⁷⁶ Shall we ascribe a right to lie in response to prying, snooping and prejudiced questions; a right to lie to protect information about, and distortions of, the details of our sexual practices? Shall we extend that right to public officials and public figures to the same

73. See ELLMANN, *supra* note 62, at 461 (stating that Wilde did not practice "buggery" as such).

74. See Renee Graham, *Born to Be Wilde: Stephen Fry Realizes Dream to Play Author*, BOSTON GLOBE, May 31, 1998, at E11 (analyzing actor who portrayed Wilde and briefly describing Wilde's lifestyle).

75. See John Walsh, *The Big Picture—All Too Black and White*, INDEP. (London), Oct. 29, 1998, at 11 (criticizing film and noting instance of political "schmoozing").

76. See Michael J. Chandler & Jamie Afifi, *On Making a Virtue Out of Telling Lies*, 63 SOC. RES. 731, 731 (1996) (noting that good lie deserves certain amount of respect).

extent as ordinary citizens and resist the temptation to dismiss the problem quickly with the fiction that public officials and public figures "waive" their rights to privacy by thrusting themselves into the limelight?

A large amount of philosophical, jurisprudential and psychological literature argues that privacy, including sexual privacy, is important.⁷⁷ Philosophers ascribe to privacy a utilitarian and deontic value tied to autonomy, independence, self-expression, love, friendship, bodily integrity, judgment and democracy. Jurisprudential scholars stress privacy's value as it relates to limiting government and democratic rights.⁷⁸ Psychologists say privacy is key to our well-being, which is characterized by the reduction of social anxieties.⁷⁹

Sexual privacy is a vehicle and domain for self-expression. It is a realm in which excessive self-consciousness and conventionality can interfere with the pursuit of intimacy through genuine efforts to please and be pleased; a realm that can be diminished by accountability and ridicule. Imagine having to explain why one is attracted only to blonds or needs to hear gospel music to achieve an orgasm. Imagine trying to explain why you prefer phone sex with a near stranger to spending time with your wife. Sex is an area in which we encounter our desires, prejudices and shame, and cloak these emotions in privacy. Society can be hypocritical about sex, often criminalizing some of the very things consenting adults find most exciting. Privacy allows us to flout social and legal hypocrisy without paying a penalty. Sex in private is a realm in which we can come to see ourselves as we really are and find greater self-awareness; for achieving intimacy sometimes demands self-revelation and the abandonment of habitual patterns of self-deception.

The tastes, preferences, styles and habits we exhibit in sexual intimacy will usually deserve the protection of privacy norms and conditions. Sex-related violence and aggression must be brought to light, treated and punished. At least some of the interest in knowing the details of the Lewinsky affair was prompted by the concern about whether the President was guilty of sexual harassment in the White House or abused the power of his office. It is a shame that we had to find this out through secret tape recordings, forced testimony and DNA testing.⁸⁰

Sometimes we lie because we do not expect other people to appreciate what we regard as our true identities and the private lives in which our

77. See Allen, *Constitutional Law*, *supra* note 1, at 153-55 (providing discussion of scholarly books and articles relating to privacy).

78. See, e.g., Jed Rubenfeld, *The Right of Privacy*, 102 HARV. L. REV. 737, 737 (1989) (finding that right to privacy is connected to "the legitimate limits of governmental power").

79. See CARL D. SCHNEIDER, *SHAME, EXPOSURE, AND PRIVACY* 41 (1977) (arguing that privacy is necessary for maintenance and improvement of self and noting that private sphere allows one to relax).

80. See *Starr Report*, *supra* note 3, at 50, 54 (indicating that DNA tests showed that semen on Monica Lewinsky's dress was President Clinton's).

true identities emerge. Sometimes we lie because telling the truth can lead to rejection, ridicule, censure or punishment. Lying can keep the world out and allow us to escape the offensive meanings others assign to our conduct. It may be easier to say, "I'm allergic to shell fish," a lie, than to reveal that one belongs to a religious minority reviled as a radical vegetarian cult. It may be easier to say, "I'm not a lesbian," when one is indeed a lesbian, than to invite disapproval, rejection or even beatings.⁸¹

Keeping conduct private is a way to escape having to see oneself in the shameful, hateful and ridiculous terms that others may see us. Although nearly every adult engages in some type of sexual activity, we all have unique combinations of acts, habits, emotions, language, styles, props and tastes that are our own. Disclosure of our sexual selves could undercut our ability to be our sexual selves. Disclosure may make the sexual conduct or partnerships we once enjoyed impractical. Disclosure may subject us to shame and ridicule or decrease our ability to experience joy and intimacy our way. After the Starr Report and the impeachment, it is unlikely that Clinton will ever again enjoy the role of Monica Lewinsky's cigar-toting lover, "Handsome," without feeling ridiculous.⁸²

These considerations about the importance of privacy and sexual expression help explain what is going on when powerful men seek refuge in technical definitions of sex in lieu of truth-telling. They are trying to fight off the imposition of others' interpretations of their identities and conduct. Oscar Wilde denied that he was a sodomite because he wanted to disassociate himself from the negative connotations of homosexuality in the minds of those who disapproved of it and were disgusted by it. He disliked the derogatory meanings others in his society brought to their understandings of homosexuality: depravity, filth, frivolity and godlessness. In his own mind, he was participating in the "New Aestheticism," a realm of intellectual and spiritual beauty higher than ethics itself.⁸³ For him, intimacy with young men was not reducible to particular sexual acts or to fecal stains on a sheet. These "Greek" relationships, as he understood them, were part intellectual, part aesthetic, part pedagogical, part paternal and part erotic. The parts formed an inseparable whole. Wilde felt as though Queensberry, who sought him out at a theater and club, was intentionally destroying his private life. Wilde wrote to a friend that his "whole life seems ruined by this man. The tower of ivory is assailed by the foul thing. On the sand is my life spilt."⁸⁴ Wilde lied because he was un-

81. See Ruben Castaneda, *Hate Crimes Laws Rely on Motives, Not Targets: Laurel Slaying Illustrates Fine Line*, WASH. POST, Oct. 26, 1998, at D1 (noting that antigay violence has created call for national hate crime legislation).

82. See *Starr Report*, *supra* note 3, at 60-61, 93, 107, 139 (indicating that Ms. Lewinsky testified that she called President Clinton "Handsome." President Clinton inserted cigar into her vagina and she and President Clinton had phone sex on 10 to 15 occasions).

83. See ELLMANN, *supra* note 62, at 305-06 (commenting on psyche of Wilde).

84. *Id.* at 438-39.

able through force of character and art to persuade an entire society of what he thought was the true nature and significance of his relationships with men, and unable to get his wife, the world or Queensberry to see these relationships' true meaning and his true identity. Wilde lied to keep his private world and his self-esteem intact. He did not enjoy the lies that he repeated to his own lawyer, but they seemed necessary.⁸⁵

President Clinton lied because he believed there was no post-feminist interpretation of his extra-marital affair with a young intern that the public would accept uncritically. His relationship could be construed as the sexual exploitation of a young female subordinate, or worse, as sexual harassment, Paula Jones style.⁸⁶ For Clinton, I conjecture, the meaning of his affair was harmless and represented consensual titillation, sexual gratification, fun, diversion and friendship. Lying was an effort to preserve a private domain in which those meanings of the affair could flourish. I have known nonmonogamous married couples who lied to most acquaintances about their arrangements because they did not expect other people to understand the real meaning of their conduct—whether loyal, liberating, fun, expressive, intimacy-expanding or experimental. Indeed, despite all the talk of Bill lying to Hillary and betraying her, for all we know, the President and his wife shared a private “meaning community” in which affairs were allowed and not considered a breach of their mutual commitments.

Given the importance of privacy and sexual privacy just described, is it always morally permissible to lie to someone making inquiries about one's sex life? The answer is surely no. Parents, spouses and partners may, by virtue of their responsibilities and our commitments to them, have a right to know the details of our sex lives. A more plausible principle than “one has a right to lie in response to all inquiries into one's sex life” is the principle that “one has a right to lie in response to all *unjustified* inquiries into one's sex life.” Nonetheless, even this principle seems too strong and too simplistic. What inquiries will be unjustified? Consider an example involving sexual harassment. In the context of sexual harassment in the workplace, for example, rebuffing rude, invasive questions with falsifications seems morally acceptable. Are you busy tonight? Is your husband out of town? Do you like dirty movies? You know how to show a guy a good time, right? In the above situation, falsification would seem appropriate and certainly not unethical.

Suppose, however, you are a gay man on an airplane and you strike up a conversation with the stranger next to you who asks if you are gay.

85. See *id.* (interpreting scope of Wilde's lies). Wilde wrote to Douglas and stated: “What is loathsome to me is the memory of interminable visits paid by me to the solicitor . . . when you and I would sit with serious faces telling serious lies to a bald man . . .” *Id.* at 439.

86. In early November 1998, without admitting wrongdoing or apologizing, President Clinton settled the lawsuit Paula Jones brought against him alleging sexual harassment.

Further, suppose you are a straight black woman and the person beside you asks if you date white men, not as a come on, but because he wants to know more about your social perspectives solely for purposes of the conversation. Perhaps the right thing to do in these cases is to answer honestly, but then explain that you believe posing such questions is akin to prying. From the perspective of progressive liberals, proudly affirming homosexuality and racial tolerance when one can do so safely better serves the truth-teller and his or her society.

What if you are a candidate for a seat on the Supreme Court and you are asked by the Senate Judiciary Committee whether you enjoy viewing sexual pornography? Should you answer truthfully?⁸⁷ This highly personal question seems improper when put exclusively to the second black man in history with a chance at a seat on the Supreme Court. Refusal to answer could be read as an admission, equaling "sudden death" for the candidate. Denial may be the ambitious candidate's only practical option. A judicial candidate ought not to have to reveal his or her sexual tastes, particularly lawful ones, to others as a condition of holding a public office. No one has a right to such information. It is not self-evident, however, that one therefore has a right to lie, that one ought to lie or that lying is more ethical under the circumstances than refusing to answer or telling the truth. Willingness to speak the truth, even when it is embarrassing, damaging and sought without good cause, may be a self-destructive virtue we expect of public officials.

The morality of the situation is not self-evident; the psychology, however, is. In the past, we were reared to expect that we could properly do certain things in private without public accountability. When the privacy ethics under which we are reared clash with a novel tell-all ethic of hard-ball politics and mass media journalism, we are unsettled. We may find ourselves unable to humiliate and shame ourselves with truth-telling. We may lie as a result, and who really can blame us? I believe Justice Clarence Thomas did all of the things Anita Hill alleged; however, I do not entirely blame him for not acknowledging it to the Senate.⁸⁸

It is easy to understand, and, therefore, hard to fault, some lying. Lying is an ordinary strategy. We all know it. This is why the public did not turn *en masse* against President Clinton. He should not have had the affair, but his efforts to cover it up with lies to friends, family and strangers are what you would expect from someone who stands to lose so much self-esteem and prestige. Regrettably for the President, his transparent lies caused Mr. Starr to seek very intimate details of his sexual habits to disprove his story and, once those details were collected, Starr made the case

87. See Michael Wines, *The Thomas Nomination: Compelling Evidence on Both Sides, But Only One Can Be Telling Truth*, N.Y. TIMES, Oct. 15, 1991, at A20 (indicating that polygraph test bolstered Anita Hill's case, particularly her claim that Thomas talked about pornography and sex acts).

88. See ANITA HILL, SPEAKING TRUTH TO POWER 222-24 (1997) (explaining details of favorable polygraph examination that Anita Hill passed).

that they should be revealed to the public. But who among us could easily bear, with grace, having the raw details of his or her sex life exposed for all to read about?

An important issue raised by the Clinton impeachment was whether the President lied under oath. In a secular legal system, oath-taking is symbolic. Few Americans today believe, as their common law predecessors may have, that they place their mortal souls on the line by making false statements under oath. It should not be surprising then, given the functions of privacy, that people will lie, mislead others and omit facts to maintain privacy, even under oath. Ironically, a person threatened with having her intimate life scrutinized in an official government forum has the greatest incentive of all to attempt the good lie. We should expect lies, omissions, equivocations, dissembling and so on of persons rightly or wrongly put in such a situation.

Many legal doctrines recognize that requiring people to be truthful about matters they deem very private compromises privacy interests and invites dissimulation. One of the goals of the Fifth Amendment right against self-incrimination is the protection of privacy. The attorney-client, physician-patient, clergy-penitent, psychotherapist-patient and spousal privileges all have goals of protecting the privacy of individuals. The Supreme Court recently narrowed the "exculpatory no" doctrine, which immunized from criminal liability persons who make certain false statements.⁸⁹ The surviving doctrine presupposes the temptation to lie when the truth will almost surely lead to prosecution and conviction.

VII. THE PROBLEM OF CELEBRITY

Men and women of special genius or charisma can sometimes get the world to accept their interpretations of reality or to embrace their meanings. Oscar Wilde brought such transformative genius to his stories and plays.⁹⁰ Success in one domain, however, does not always translate in to success in another. While the impulse to set one's own meanings is as understandable as it is strong, it is not realistic for celebrities to expect that they will be able to do the same. Their lives are scrutinized too closely. Like artists, politicians are creators of meaning. A charismatic political leader can stand before a crowd and say, "Happy days are here again," and begin, by his words, to make it true.⁹¹ For powerful celebrities in every field, the hubris of expecting to impose one's own meanings on

89. See *Brogan v. United States*, 118 S. Ct. 805, 811-12 (1998) (holding that "exculpatory no" exception does not apply with respect to criminal liability under 18 U.S.C. § 1001 (1994) for making false statements).

90. See, e.g., RICHARD ALDINGTON, *THE PORTABLE OSCAR WILDE* 1 (1946) (discussing varying opinions of Wilde, including claim that "he was the greatest . . . writer of the nineteenth century").

91. See HAROLD EVANS, *THE AMERICAN CENTURY* 241, 246 (1998) (noting that "Happy Days are Here Again" was Franklin D. Roosevelt's Depression-busting campaign song).

morally controversial and intimate behavior is fueled by the expectations of success that have been enjoyed in other domains of life. But in areas of sexual morality, it is hard to succeed if one is ahead of one's time. Such was the case with Wilde, who lived in an era of homosexual repression, facing several harsh criminal libel laws.

Celebrity makes privacy and the strategy of lying to protect privacy less available. It also makes the strategy of not talking to avoid the need to lie less available.⁹² Famous politicians and top public officials work and play before the eyes of the media, body guards and staff. They face a variety of people in journalism and law enforcement whose professional duties are to not take anyone's word at face value. Consequently, some political celebrities find it prudent to be squeaky clean or extremely careful and, in doing so, may falsify their actual preferences to fit in.⁹³

VIII. TRUST

Trust, "a fragile good," according to Sissela Bok, is an issue for American democracy.⁹⁴ The men and women elected to public office are supposed to represent the interests of their constituencies. The public needs to be able to trust elected and appointed officials to do what they are elected to do. The Vietnam War, the Watergate Affair, the Iran-Contra Affair and the Clinton-Lewinsky Affair all illustrate that the President and his closest advisors cannot be trusted absolutely.⁹⁵ They are capable of crimes, cover-ups, omissions and outright lies. Outside of Washington, politicians and officials disappoint as well. They lie, distort, steal, cheat on their spouses, sexually harass women, demean minorities, abuse drugs and alcohol, evade taxes, accept bribes, hire undocumented workers, and assault, plot to kill and, occasionally, actually kill their adversaries.⁹⁶

92. See BAILEY, *supra* note 5, at 71 ("Public opinion is not easily avoided. If you . . . try to opt out of the game and be neither a talker nor a listener, the penalty is to be considered . . . not part of the community.").

93. See KURAN, *supra* note 28, at 11 (explaining dynamics of lying to protect oneself and to fit in). Kuran states:

Talk being cheap, anyone can claim to be against this lifestyle or that political platform. An effective way of making such a claim credible is to participate in efforts to punish those from whom one is seeking dissociation. A closeted homosexual may become a gay basher to allay suspicions about his own private life [H]ypocrisy is a universal, and often successful, tactic of self-protection and self-promotion.

Id.

94. See Bok, *Lies Come With Consequences*, *supra* note 6, at C1 (noting that public's trust in elected officials is necessary for effective government, but leaves these officials susceptible to corruption).

95. See ORMAN, *supra* note 17, at 4 (identifying deception as prime characteristic of modern presidency).

96. See Bruce Frankel & Bill Hewitt, *Only in America What Hath Election Day Wrought? A Wrestler, a Brother Act and a Speaker Made Speechless*, PEOPLE, Nov. 23, 1998, at 61 (explaining that unless Burks's widow ran as write-in candidate, Looper would win by default). The late Tennessee State Senator Tommy Burks was murdered two weeks before the November 1998 election and police charged Byron

It is hard to quantify trust or to say just how much trust the U.S. political order requires to remain effective and legitimate. Ascertaining the amount of trust Americans actually place in officials is not easy. Polls only reach a small segment of the population, and the answers people give to pollsters may overstate or understate their actual feelings. On the one hand, several trends could suggest a perilously low level of trust in government: the tone of political discourse is often cynical; the number of people interested in engaging in serious political discussion is small; voter turnout is low, compared to other democracies; and antigovernment activism is flourishing. On the other hand, I suspect the vast majority of people living in the United States would say that government is legitimate and effective, and that they can rely on it. It does reliably offer them security and services worth having. Although it is commonplace to interpret low voter turnout as a sign of disenchantment and disengagement with politics, one might also read it as evidence that those entitled to vote actually do trust that the candidates will adequately serve their needs. Indeed, I believe that most people in the United States, despite their sometimes vociferous complaints, feel very secure with their government. They do not necessarily believe all public officials are always ethical and fair, but they do believe that they are, on the whole, mostly ethical and fair enough.

When philosophers assert that lies by public officials erode trust, they are resting on a time-honored axiom that workable cooperative enterprises require participants to be truthful, trustworthy and reliable. The axiom is doubtlessly true, but does not entail that workable cooperative enterprises will fall apart if leaders are sometimes not truthful about matters of direct relevance to their official duties.⁹⁷ In addition, it certainly does not entail that workable cooperative enterprises must fall apart if leaders are sometimes not truthful about matters that the public may deem tangential to their official duties, such as sex, and that are well-understood as matters in which moral failure and lapses in judgment are ordinary and predictable. I am suggesting that the conclusion that lying about sex erodes trust in public officials overlooks how much the U.S. public of today and yesterday understands and discounts sex and privacy-related deception.⁹⁸

Secrecy and deception about national programs and policies are components of presidential power.⁹⁹ Many presidents, including some of the

“Low Tax” Looper, Burks’s opponent in the election, with the murder. *See id.* To prevent the jailed Looper from winning the election by default, the dead man’s widow ran in his place and garnered 96% of the vote as a write-in candidate. *See id.*

97. *See* Mothersill, *supra* note 28, at 924-25 (disagreeing with position that lying causes deception to become “a way of life”).

98. *See* Poll, Roper Center at the University of Connecticut, Question No. 005 (1998) (noting that in recent public opinion poll, 49% of respondents said that they thought president would be justified in lying to protect privacy of his family, 46% said he would not be justified in lying and 5% said they “did not know”).

99. *See generally* ORMAN, *supra* note 17, at 7 (defining distinctly different terms “secrecy” and “deception”).

greatest presidents, falsified and concealed important personal facts from the American people during their terms in office. Thomas Jefferson's secret was Sally Hemings, a black slave by whom he bore a child;¹⁰⁰ Grover Cleveland's secret was an out-of-wedlock son named Oscar, whose sane mother Cleveland had committed to an insane asylum;¹⁰¹ Warren Harding's secret was a mistress smuggled into White House closets for sex, and their daughter, Elizabeth Ann, whom Harding declined ever to see or to support;¹⁰² Woodrow Wilson's secrets were dyslexia, a series of strokes and an extra-marital affair with Mary Peck;¹⁰³ Franklin Roosevelt's secrets were a mistress and a bout with polio that left him completely unable to walk;¹⁰⁴ John F. Kennedy's secrets were addictions to drugs and sex;¹⁰⁵ and Ronald Reagan's secret, sadly visible before he left office, was Alzheimer's disease.¹⁰⁶

Sissela Bok raises the following series of key questions: "Why . . . should lying to the public not be . . . legitimate, in cases of persistent and intrusive probing? What is it that turns an official's lie to the public into a matter of public concern, no matter how rightfully private the subject of the lie itself?"¹⁰⁷ Her answer is that "the credibility of public officials is crucial in a democracy."¹⁰⁸ Bok further states that "[a]ppeals to privacy can be exploited to cover up wrongdoing just as much as national security

100. See Patrick Rogers et al., *All Tom's Children: A President's Presumed Affair With a Slave Gives New Meaning to the Term Jeffersonian*, PEOPLE, Nov. 23, 1998, at 77 (noting that DNA test conducted at Oxford University indicated that Jefferson fathered child with one of his slaves).

101. See EVANS, *supra* note 91, at 31 (noting that Republicans hoped that disclosure of Cleveland's out-of-wedlock son would cost him presidency in 1884).

102. See *id.* at 201 (describing Harding's secret relationship with Nan Britton and his daughter Elizabeth whom he never saw and how story was published despite attempts of suppression).

103. See Ford Burkhart, *Edwin A. Weinstein, 89, Neuropsychiatrist Who Studied President Wilson*, N.Y. TIMES, Sept. 21, 1998, at B12 (noting that deceased neuropsychiatrist believed that President Wilson's denial of illnesses contributed to presidential problems).

104. See EVANS, *supra* note 91, at 243 ("Few . . . knew how crippled he was. The press respected his privacy. The public did not see pictures . . .").

105. See SEYMOUR M. HERSH, *THE DARK SIDE OF CAMELOT* 229-30 (1997) (emphasizing President John F. Kennedy's sex-filled private life and its effect on people around him).

106. See Burkhart, *supra* note 103, at B12 (indicating that physician who studied Reagan's presidency concluded that he suffered from Alzheimer's symptoms, like loss of memory, that left him frequently unaware of world affairs); see also Melinda Beck, *Alzheimer's Terrible Toll*, NEWSWEEK, Oct. 2, 1995, at 36 (stating that Reagan privately worried about his failing memory and once failed to recognize member of his own cabinet); M.J. Zuckerman, *Bush: Reagan Wasn't Ill as President*, USA TODAY, Nov. 29, 1996, at 2A (stating that historians and others wonder whether Reagan's failing memory during his term as president was related to Alzheimer's).

107. Bok, *Lies Come With Consequences*, *supra* note 6, at C1.

108. *Id.*

can”¹⁰⁹ Moreover, she makes the slippery slope argument that lies lead to further lies, lies by the liar and lies by those who emulate the liar.¹¹⁰ Bok states finally that “when distrust becomes too overpowering within a family, a community or a nation, it becomes impossible to meet joint needs.”¹¹¹ Addressing the duties of public officials in this area, Bok finds that in exchange for the privileges that they have been granted, “public servants, doctors, clergy, lawyers, bankers, journalists and other professionals have a special responsibility” to “consider to what extent their actions erode or help restore this social good of trust.”¹¹²

Bok’s most powerful argument is that, for the sake of trust, public officials have a special obligation to avoid deception regarding their private lives, even when their private lives have been perhaps unjustly probed. Notice that Bok rejects the justice-of-lying-to-the-unjust principle as applied to public officials. She also avoids the fiction that public figures waive privacy and expectations of privacy by thrusting themselves into the limelight. My response to Bok is to agree that trust is vital, but to disagree that trust in government hinges crucially on officials never lying to protect privacy. In some contexts, “deliberate deception need not in general pose a significant threat to trust.”¹¹³ This is not to say that we should take pride in lies and liars, particularly those whose reckless behavior greatly affects the efficiency of two branches of the national government, and subject our nation to ridicule. We should, however, take pride in our capacity for empathetic understanding of the realm of sexuality as a realm of propriety and impropriety, of a mixture of communal and self-defined modes of intimacy and expression that may or may not conform to social expectations. A significant segment of the public appears to accept the notion that a president is justified in lying to protect the privacy of his or her family.¹¹⁴

I defend the right of presidents and other public officials to have private lives sometimes defended by deception. This is not to advocate lying on national television and under oath without conscience and concern for consequences. Privacy is a context for correcting, as well as making, sexually related mistakes. Suppose an official has an extra-marital affair, confesses it to his or her spouse in private and begins to rebuild their marriage in earnest. To deny the affair to the public in an effort to avoid further damage to a marriage is not plainly immoral, and not plainly the kind of deception that, if found out, would significantly erode public trust in government or invite more lies. In a best-selling practical guide to

109. *Id.*

110. *See id.* (explaining cyclical effects of repeated lies).

111. *Id.*

112. *Id.*

113. Jackson, *supra* note 14, at 5-9.

114. For a further review of the results of the poll conducted by the Roper Center at the University of Connecticut on whether a president is justified in lying to protect the privacy of his family, see *supra* note 98 and accompanying text.

truth-telling in personal relationships, Dr. Harriet Lerner asserts that people seek privacy primarily to protect their dignity and ultimate separateness as human beings, rather than to fool others or engage in acts of deception.¹¹⁵ For this reason, she argues, we can proudly speak of and exercise our rights to privacy.¹¹⁶ When it comes to lying to protect privacy, however, Lerner's neat dichotomy breaks apart, for in these contexts, we seek both to fool and to protect our dignity and separateness.

Adrienne Rich suggests that even lying justified by an appeal to privacy can be a product of cowardice and an attempt to "short-cut through another's personality."¹¹⁷ Because of his manipulative behavior and his cowardice, I do not defend President Clinton's handling of his private life. In my estimation, Clinton was wrong to involve himself with Lewinsky in the shadow of the Paula Jones case, in the corridors of the White House and in the context of a very public marriage. Having walked on the "Wilde" side, he was wrong to go further down that road by desperately and pathetically using the public airways and government employees to further his deception. It was almost as if the President thought he was a private citizen lying to a gullible spouse behind closed doors, circa 1958, rather than the most watched and investigated man on the planet lying to the planet in 1998.

IX. CONCLUSION

As Leonard Saxe astutely observed, "this seems to have become a society in which lying is endemic, but in which a Victorian-like attitude is also maintained that heavily sanctions those who are caught in prevarication."¹¹⁸ To this, I might add, that ours' seems to be a society in which extra-marital sex is endemic, but in which a Victorian-like attitude is maintained that severely sanctions those who are caught in adultery. It is time to embrace openly a less hypocritical, more consistent set of norms that would make lying about sex seem less necessary.

My conclusion is threefold. First, telling the truth is better than lying, most of the time. This is especially true in institutional settings where a high degree of trust and loyalty are essential.¹¹⁹ Lying can undermine trust, render information unreliable and entail disrespect for persons.

115. See HARRIET LERNER, *THE DANCE OF DECEPTION* 36-37 (1993) (arguing that protecting one's body and decisions regarding one's body from intrusion by others may be matter of privacy or secrecy).

116. See *id.* (discussing underlying motives of why individuals seek privacy).

117. See ADRIENNE RICH, *ON LIES, SECRETS AND SILENCE* 185-92 (1979) (examining psychological underpinnings of lying).

118. Saxe, *supra* note 48, at 410. Saxe also states, "A kind of hysteria about dishonesty seems to have permeated our culture. Perhaps stimulated by pervasive mendacity, we are quick to call others liars and frauds." *Id.* at 414.

119. See Steven L. Grover, *Lying in Organizations: Theory, Research, and Future Directions*, in *ANTISOCIAL BEHAVIOR IN ORGANIZATIONS* 68, 69-70 (Robert A. Giacalone & Jerald Greenberg eds., 1997) (finding that lying can hinder how organizations function and threaten trust underlying relationships in organizations).

Second, the commonplace practice of lying to maintain privacy is sometimes a morally acceptable alternative to truth-telling. Third and finally, for government to be trustworthy, it must show respect for the privacy of ordinary citizens and public officials. Likewise, ordinary citizens and public officials, because we run this nation together, must strive to make honesty in their public roles and private lives a priority.